Supreme Court, U.S.
FILED

93 1795 APR 20 1994

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

Joseph Steinfeld,

Petitioner,

v.

Rosemarie Hoddick, Guardian of the Estate of David Steinfeld,

Respondent.

Petition for Writ of Certiorari to the Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

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45 pp.

QUESTION PRESENTED

The Illinois Probate Act (Ill. Rev. Stat. 1989, Ch. 110½, par. 11a-1 *et seq.*) requires that in a proceeding to adjudicate a person to be mentally disabled the petition for adjudication be accompanied by a medical report or that the court order that appropriate evaluations be performed at least 10 days prior to hearing; that a guardian *ad litem* be appointed to represent the respondent or that the Court make a determination that such appointment is not necessary; that respondent is entitled to be represented by counsel at an evidentiary hearing; that the court shall inquire at the hearing regarding the nature and extent of the respondent's disability and if the respondent is adjudged to be disabled, the court shall enter a written order stating the factual basis for its findings.

On June 8, 1989, David Steinfeld was adjudicated to be mentally disabled without *any* of the foregoing statutory safeguards having been employed.

The question presented for review is whether David Steinfeld's right to procedural due process has been violated and, if so, whether the order adjudicating him to be mentally disabled is nevertheless a valid order as the Illinois Supreme Court has held.

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Petitioner Joseph Steinfeld respectfully prays that the Court issue a writ of certiorari to review the judgment of the Illinois Supreme Court affirming the validity of the order of the Cook County Probate Court adjudicating David Steinfeld to be a disabled person.

OPINIONS BELOW

The decision of the Illinois Supreme Court affirming the decision of the Illinois Appellate Court is unreported. *In re Estate of David Steinfeld*, No. 74267 (January 20, 1994) (App. p. 1). The decision of the Illinois Appellate Court is reported at 233 Ill.App.3d 715, 599 N.E.2d 1026 (App. p. 21).

JURISDICTION

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional provision:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution, Amend. 14.

This case involves the following provisions of the Illinois Probate Act:

> Ill. Rev. Stat. 1989, Ch. 110½, § 11a-9:
>
> § 11a-9. Report. (a) The petition for adjudication of disability and for appointment of a guardian should be accompanied by a report which contains (1) a description of the nature and type of the respondent's disability; (2) evaluations of the respondent's mental and physical condition and, where appropriate, educational condition, adaptive behavior and social skills, which have been performed *within 3 months* of the date of the filing of the petition; (3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor; (4) a recommendation as to the most suitable living

arrangement and, where appropriate, treatment or habilitation plan for the respondent and the reasons therefor; (5) the signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician.

(b) If for any reason no report accompanies the petition, the court shall order appropriate evaluations to be performed by a qualified person or persons and a report prepared and *filed with the court at least 10 days prior to the hearing.*

Ill. Rev. Stat. 1989, Ch. 110½, § 11a-11:

§ 11a-11. Hearing. (a) The respondent is entitled to be represented by counsel, to demand a jury of 6 persons, to present evidence, and to confront and cross-examine all witnesses. The hearing may be closed to the public on request of the respondent, his guardian ad litem, or his counsel. Unless excused by the court upon good cause shown, the respondent shall be present at the hearing.

(b) When the respondent is represented by counsel, the Office of the State's attorney of the county in which the action is brought shall present the case for the petitioner, unless the petitioner is represented by counsel who will present the matter to the court.

(c) Upon oral or written motion by the respondent or the guardian ad litem or on the court's own motion, the court shall appoint one or more independent experts to examine the respondent. Upon the filing with the court of a verified statement of services rendered by the expert or experts, the court shall determine a reasonable fee for the services performed. If the respondent is unable to pay the fee, the court shall enter an order upon the State to pay the entire fee or such amount as the respondent is unable to pay, from funds appropriated by the General Assembly for that purpose.

(d) In an uncontested proceeding for the appointment of a guardian the person who prepared the report required by Section 11a-9 will only be required to testify at trial upon order of court for cause shown.

(e) *At the hearing the court shall inquire regarding*: (1) the nature and extent of respondent's general intellectual and physical functioning; (2) the extent of the impairment of his adaptive behavior if he is developmentally disabled, or the nature and severity of his mental illness if he is mentally ill; (3) the understanding and capacity of the respondent to make and communicate responsible decisions concerning his person; (4) the capacity of the respondent to manage his estate and his financial affairs; (5) the appropriateness of proposed and alternate living arrangements; and (6) any other area of inquiry deemed appropriate.

STATEMENT OF THE CASE

On June 8, 1989, David Steinfeld was adjudicated to be a disabled person by the probate division of the Circuit Court of Cook County. The foregoing statutory provisions notwithstanding, no medical report was attached to the petition and none was filed 10 days prior to hearing. No medical evidence on the issue of David's disability was ever introduced; a guardian *ad litem* was not appointed and no determination was made by the court that none was required; David was not present at the hearing and the court made no finding of good cause why he should not be present and no inquiry was made by the court as to the respondent's condition. The nature of the proceeding was aptly summarized by the Illinois Supreme Court

(App. p. 9) as "a colloquy among the trial judge, Hoddick (the individual ultimately appointed to be David's guardian) and counsel for Lotte (David's mother) regarding David's living arrangements and his physical and mental capabilities."

On June 7, 1991, Joseph Steinfeld, David's brother, filed a petition to vacate the order adjudicating David to be mentally disabled. The petition was denied on August 22, 1991 and on appeal the Illinois Appellate Court affirmed, 233 Ill.App.3d 715. Petition For Leave To Appeal to the Illinois Supreme Court was allowed, 147 Ill.2d 626, 606 N.E.2d 1225.

The federal question sought to be reviewed, i.e., the deprivation of David's due process rights under the fourteenth Amendment were first raised on Petition For Rehearing filed with the Illinois Appellate Court and again on appeal to the Illinois Supreme Court.

Neither court addressed the issue, however, both courts recognized the procedural deficiencies. The Appellate Court expressed "our concern regarding the trial court's apparent failure to follow statutory guidelines when it adjudicated David a disabled person" (App. p. 29) and the Supreme Court (App. p. 13) stated:

> "Although we strongly disapprove of the perfunctory manner in which the trial judge conducted the disability and guardianship proceeding in the case at bar and the court's disregard of several of the statutory procedures which are designed for the protection of persons alleged to be disabled, it has been held that those requirements are procedural, not jurisdictional."

The Illinois Supreme Court held that the order in question was a valid order because the court had personal and subject-matter jurisdiction (App. p. 14).

REASONS FOR GRANTING THE WRIT

This court should review the decision of the Illinois Supreme Court because:

1. it flies in the face of the decisions of this Court in *Addington v. Texas*, 441 U.S. 418 (1979), and *Vitek v. Jones*, 445 U.S. 480 (1980), both of which recognize and establish the significant liberty interest in mental disability proceedings that requires due process protection; and

2. the decision, in effect, renders the safeguards mandated by the Illinois Probate Act in mental disability proceedings to be advisory and not mandatory.

I.

The Decision Of The Illinois Supreme Court Disregards The Due Process Requirements Imposed By This Court In *Addington* And *Vitek*.

The Illinois Supreme Court has held that so long as the court has personal and subject-matter jurisdiction, an order declaring a person to be disabled is a valid order notwithstanding the trial court's failure to follow any of the procedural safeguards mandated by statute.

That due process requirements apply to proceedings of this type has been made abundantly clear by this Court in *Addington v. Texas*, 441 U.S. 418, 425 (1979), and *Vitek v. Jones*, 445 U.S. 480, 494 (1980), yet the Illinois Supreme Court has in effect held that a deprivation of due process rights results in a valid order as long as the court had personal and subject-matter jurisdiction. One is hardly required to point out that a decision such as this practically eliminates any notion of due process in mental disability proceedings.

II.

The Decision Of The Illinois Supreme Court Has Nullified The Protection Of The Illinois Probate Act.

The decision of the Illinois Supreme Court has in effect nullified the statutory protection in mental disability proceedings provided by the Illinois Probate Act. Nowhere is the disregard for individual rights expressed in the opinion as a whole more callous than as expressed in the specially concurring opinion filed by Justice Freeman (App. p. 19).

The only remedy here is for this Court to hold that David was denied procedural due process in the disability proceeding and that any order entered in that proceeding affecting David's rights or status is void.

CONCLUSION

For the foregoing reasons, petitioner Joseph Steinfeld respectfully requests that this Court grant the Petition and issue a Writ of Certiorari to the Illinois Supreme Court.

Respectfully submitted,

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